

K.S.A. 44-534a limits appeals from preliminary hearings to certain specific jurisdictional issues involving “whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee’s employment, whether notice is

given or claim timely made, or whether certain defenses apply” These issues are considered jurisdictional and subject to review by the Appeals Board. The only other method of appealing preliminary hearing matters to the Appeals Board is under K.S.A. 44-551 which allows review by the Appeals Board if “it is alleged that the administrative law judge exceeded the administrative law judge’s jurisdiction in granting or denying the relief requested at the preliminary hearing.”

K.S.A. 44-534a grants the Administrative Law Judge the authority to make preliminary awards of medical compensation and temporary total disability compensation pending the conclusion of a full hearing on the claim.

Claimant alleges the Administrative Law Judge exceeded his jurisdiction by finding claimant not entitled to temporary total disability compensation benefits when released with temporary restrictions from the treating physician and the employer refused to accommodate those restrictions. K.S.A. 44-510c(a)(2) states in part:

“Temporary total disability exists when the employee, on account of the injury, has been rendered completely and temporarily incapable of engaging in any type of substantial and gainful employment. A release issued by a health care provider with temporary medical limitations for an employee may or may not be determinative of the employee’s actual ability to be engaged in any type of substantial and gainful employment, except that temporary total disability compensation shall not be awarded unless the opinion of the authorized treating health care provider is shown to be based on an assessment of the employee’s actual job duties with the employer, with or without accommodation.”

Claimant argues the Administrative Law Judge erred in basing his decision upon Crabtree v. Beech Aircraft Corp., 5 Kan. App. 2d 440, 618 P.2d 849 (1980). In Crabtree, there was significant discussion regarding temporary partial disability versus temporary total disability compensation. A review of the opinion of the Administrative Law Judge indicates he was focused upon whether claimant was entitled to temporary total disability compensation and merely used the logic of the Court of Appeals in Crabtree to explain his decision. As such, the Appeals Board finds the appeal by the claimant does not state a specific issue upon which the Appeals Board can take jurisdiction from this preliminary hearing. The statute clearly grants the Administrative Law Judge the power and jurisdiction to decide issues dealing with temporary total disability compensation and claimant’s entitlement to same. The opinion of the Administrative Law Judge does not appear to exceed his jurisdiction in denying claimant the benefits requested.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Robert H. Foerschler dated September 17, 1996, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of November 1996.

BOARD MEMBER

c: Leah Brown Burkhead, Mission, KS
Kenneth Hursh, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director